

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: June 21, 2017

BRIAN LATOUR,

Plaintiff,

-against-

**STIPULATION AND
ORDER OF
SETTLEMENT AND
DISCONTINUANCE**

15-CV-8767 (KPF)

CITY OF NEW YORK, PRISON HEALTH SERVICES,
INC., WARDEN TURHAN GUMUSDERE, CORRECTION
OFFICER ("C.O.") DWAYNE DUBOIS (Shield #18771),
C.O. PANTANO, C.O. CONTARRO, C.O. HANSON,
DEPUTY RUGGERIO, C.O. ANDERSON (Shield # 17438),
CAPTAIN SWAN (Shield # 1104), REGISTERED NURSE
TRACY SIMPSON-MITCHELL, PHYSICIAN ASSISTANT
("P.A.") COOPER, TOMMY MICHAEL, DR. DAVID
ROSENBERG, P.A. CURT WALKER, AND JOHN DOES
##1-20,

Defendants.

WHEREAS Plaintiff Brian Latour commenced this action by filing a Complaint and Jury Demand on or about November 6, 2015 against Defendants City of New York, "Prison Health Services, Inc.," "Commissioner Joseph Ponte," "Former Chief of Department of DOC William P. Clemons," "Warden Turhan Gumusdere," "Correction Officer (C.O.) Dwayne Dubois," "C.O. Pantano" (Michael Pantano), "C.O. Contarro" (Jason Catalanotto), "C.O. Hanson" (Lincoln Hanson), "Deputy Ruggerio" (Arthur Ruggiero), "Physician Assistant (P.A.) Cooper," and "John Does ## 1-20," alleging violations of his rights under the Fourteenth Amendment to the United States Constitution, secured by 42 U.S.C. §§ 1983 and 1988; Title II of the Americans with Disabilities Act, 42 U.S.C. § 12132; Section 504 of the Rehabilitation Act, 29 U.S.C. § 794; the Constitution and laws of the State of New York; and the laws of the City of New York; and seeking compensatory and punitive damages;

WHEREAS Plaintiff filed a First Amended Complaint and Jury Demand on or about February 26, 2016 against the above-listed defendants, additionally naming “C.O. Anderson” (Antoinette Anderson), “Captain Swan” (Marion Swan), “Registered Nurse Tracy Simpson-Mitchell,” “Tommy Michael,” “Dr. David Rosenberg,” and “P.A. Curt Walker;”

WHEREAS Plaintiff filed a Second Amended Complaint and Jury Demand on or about April 29, 2016 against all of the above-listed defendants, but removing Commissioner Joseph Ponte and Former Chief of Department William P. Clemons (this group is hereinafter referred to “Defendants”);

WHEREAS by notices dated June 13, 2016, all Defendants filed motions to dismiss the Second Amended Complaint and Jury Demand;

WHEREAS the Court issued an Order on February 2, 2017, ruling on Defendants’ motions to dismiss, wherein Plaintiff’s First Cause of Action for “Deliberate Indifference to Serious Medical Needs” was dismissed as to Defendants Dubois, Catalanotto, Pantano, Anderson, Swan, and Simpson-Mitchell; Second Cause of Action for “Substantive Due Process Violation” was dismissed as to Defendants Dubois, Catalanotto, Pantano, Hanson, Anderson, Ruggiero, and Swan; Third Cause of Action for “Municipal Liability” was dismissed insofar as it alleges that the City has developed a custom of failing to provide pretrial detainees with constitutionally permissible conditions of confinement; and Fourth Cause of Action for “Violations of the ADA, the RA, New York State Human Rights Law, and New York City Human Rights Law” was dismissed insofar as it seeks relief under the Americans with Disabilities Act and the Rehabilitation Act;

WHEREAS Defendants have denied any and all liability arising out of Plaintiff’s allegations; and

WHEREAS the parties have reached a settlement agreement and now desire to resolve the remaining issues raised in this litigation, without further proceedings and without admitting any fault or liability; and

WHEREAS Plaintiff has authorized his counsel to settle this matter on the terms set forth below;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and among the undersigned, as follows:

1. The above-referenced action is hereby dismissed, with prejudice and without costs, expenses, or attorneys' fees except as specified in paragraph "2" below.

2. Defendant City of New York hereby agrees to pay Plaintiff Brian Latour the sum of one hundred and ten thousand dollars (\$110,000.00) in full satisfaction of all claims, including any claims for costs, expenses, and attorneys' fees. In consideration for the payment of this sum, Plaintiff agrees to dismiss and discontinue, with prejudice, all of the claims that were or could have been asserted in this action, and to release Defendants Prison Health Services, Inc., Warden Turhan Gumusdere, C.O. Dwayne Dubois, C.O. Michael Pantano, C.O. Jason Catalanotto, C.O. Lincoln Hanson, Deputy Arthur Ruggerio, C.O. Antoinette Anderson, Captain Marion Swan, R.N. Tracy Simpson-Mitchell, P.A. Cooper, Tommy Michael, Dr. David Rosenberg, P.A. Curt Walker, and the City of New York; their successors or assigns; and all past and present officials, employees, representatives, and agents of the City of New York or any agency or contractor thereof, including the "John Doe" defendants that Plaintiff intended to name in this action, or any entity represented by the Office of the Corporation Counsel or Heidell, Pittoni, Murphy & Bach, LLP, from any and all liability, claims, or rights of action that Plaintiff raised or could have raised in this action based upon or related in any way to the events described in the Complaint and Amended Complaints, including but not limited to the alleged violation of

Plaintiff's rights in connection with the events of September 11-24, 2014, and including all claims for costs, expenses, and attorneys' fees.

3. Plaintiff shall be responsible for the payment of any federal, state, and/or local taxes on the payment specified in paragraph "2" above.

4. Plaintiff shall execute and deliver to counsel for the City of New York all documents necessary to effect this settlement, including, without limitation, a Release based on the terms of paragraph "2" above, an Affidavit Concerning Liens, and a Release from Plaintiff's counsel. Payment shall be made to "Stoll, Glickman & Bellina, LLP, as attorneys for Brian Latour," and sent to Plaintiff's counsel.

5. Nothing contained herein shall be deemed to be an admission by the Defendants that they have in any manner or way violated Plaintiff's rights, or the rights of any other person or entity, as defined in the constitutions, statutes, ordinances, rules or regulations of the United States, the State of New York, or the City of New York or any other rules, regulations, or bylaws of any department, subdivision or contractor of the City of New York. This Stipulation and Order shall not be admissible in, nor is it related to, any other litigation or settlement negotiations, except to enforce the terms of this agreement.

6. Nothing contained herein shall be deemed to constitute a policy or practice of the City of New York or any agency or contractor thereof.


7. This Stipulation and Order of Settlement and Discontinuance contains all the terms and conditions agreed upon by the parties hereto, and no oral agreement entered into at any time nor any written agreement entered into prior to the execution of this Stipulation and Order regarding the subject matter of the instant proceeding shall be deemed to exist, or to bind the parties hereto, or to vary the terms and conditions contained herein.

8. The parties further agree that this Stipulation and Order may be executed in counterparts, and that a facsimile signature shall be deemed valid for all purposes.

Dated: New York, New York
June 16, 2017

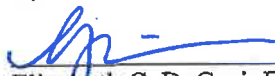
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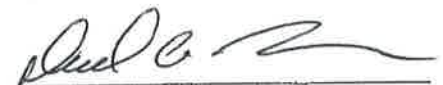
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Dated: New York, New York
June 21, 2017

SO ORDERED:


HONORABLE KATHERINE POLK FAILLA
UNITED STATES DISTRICT JUDGE

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